



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: U.S. Property Management Service Corporation

File: B-278727

Date: March 6, 1998

Barbara A. Duncombe, Esq., and Richard A. Maresca, Esq., Porter, Wright, Morris & Arthur, for the protester.

Thomas P. Cassidy, Esq., Duane, Morris & Heckscher LLP, for Ernie Stefkovic Associates, Inc., an intervenor.

Shari Weaver, Esq., Department of Housing and Urban Development, for the agency.

Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unequally evaluated the experience of the protester and the awardee, where both firms were newly formed corporations, yet the agency did not downgrade the awardee's proposal, as it did the protester's, for not evidencing significant corporate experience, but considered the experience of the awardee's proposed key personnel to determine the awardee's proposal to be superior in experience, but did not do so with regard to the protester's proposed personnel.

DECISION

U.S. Property Management Service Corporation protests the award of a contract to Ernie Stefkovic Associates, Inc. (ESA) under request for proposals (RFP) No. H03R96015600000, issued by the Department of Housing and Urban Development (HUD), for real estate asset management (REAM) services for single-family properties owned by HUD in its District of Columbia Office jurisdiction.

We sustain the protest.

HUD issued the RFP on July 24, 1996, as a total small business set-aside for the acquisition of management and other related services. The RFP contemplated a fixed-price, indefinite quantity contract for a base year with 2 option years. RFP §§ B.2, B.3. The RFP stated that HUD anticipated an inventory on the effective date of award to include approximately 850 to 900 properties. RFP § L at 182.

The RFP provided for award based on a cost/technical tradeoff and stated that the combined weight of the technical evaluation factors was more significant than price

(including options). RFP § M(a) at 191. The RFP listed the following technical evaluation factors, with their relative weights, to be scored on a 100-point scale: prior management experience (30 points); past performance (25 points); office location(s) (20 points); and management capability (25 points). RFP §§ L at 184-85, M at 192.

Proposed staffing was stated to be a consideration under the office location(s) factor, which required "evidence of an adequately staffed and equipped office (or offices)," and the management capability factor, which required a description of the offeror's "proposed staffing" and information "to support the qualifications, including relevant experience, specialized training and education, of all proposed key personnel." RFP § L at 185. The qualifications of the "offeror" were to be evaluated under the prior management experience factor, which required "evidence of the offeror's experience in the management of single family properties similar to the type of inventory covered by this solicitation," and the past performance factor, which required "evidence of the offeror's past performance" in accomplishing substantially similar work as required by the RFP. RFP § L at 184-85. Offerors were asked to supply references for recent, relevant contract work under the prior management experience and past performance factors. Id.

The agency received 17 proposals, including U.S. Property's and ESA's, by the August 23 due date. The incumbent contractor for these services, Intown Properties, Inc., did not submit a proposal because it is not a small business. The president of U.S. Property and the president of ESA are former Intown managers, who, in 1994, began their own property management company, Asset Management Specialists, Inc. (AMS). AMS did not submit a proposal in response to the RFP because a business dispute arose between the principals shortly before the August 23 proposal due date. As a result of this dispute, AMS's president formed ESA and AMS's vice president formed U.S. Property, for the purpose of submitting independent proposals in response to the RFP.¹

Because they were newly formed corporations, both ESA and U.S. Property used their presidents' shared experience with AMS and Intown to establish their qualifications under the prior management experience and past performance factors. Both proposals identified six REAM contracts awarded to AMS, which were jointly managed by ESA's and U.S. Property's presidents. The major difference between the two proposals was in the personnel proposed. ESA proposed to retain the incumbent's key personnel and staff, and its proposal emphasized the qualifications and experience of the [deleted] proposed Intown [deleted], including a past performance reference to the incumbent contract. In comparison, U.S. Property's proposal included no incumbent employees.

¹In November 1996, U.S. Property's president sold his ownership interest in AMS to ESA's president.

On February 4, 1997, the technical evaluation panel (TEP) completed its initial evaluation and recommended a competitive range of 12 proposals, including ESA's and U.S. Property's. ESA's proposal received [deleted] points and tied for the second-highest score, while U.S. Property's proposal received [deleted] points, the fifth-highest score.

The point spread between the two proposals was primarily due to the prior management experience factor, where the awardee's proposal earned [deleted] points and the protester's proposal earned [deleted] points. The TEP downgraded the protester's proposal because, although its president possessed relevant REAM experience through AMS, the protester was a newly formed corporation which lacked independent corporate experience. The TEP did not similarly question ESA's lack of independent corporate experience. Rather, the record, including testimony given by the TEP Chairperson at a hearing conducted by our Office, shows that ESA's prior management experience was considered better than U.S. Property's because the TEP was impressed with the management experience of the Intown employees proposed by ESA. Hearing Transcript (Tr.) at 12-13, 25-26, 60.

HUD conducted written discussions with the 12 offerors whose proposals were in the competitive range. HUD asked U.S. Property and ESA to solicit information from their past performance references (both initial proposals earned [deleted] points under the past performance factor); ESA was specifically asked for reference information verifying how it had handled emergency situations. With respect to the prior management experience factor, HUD questioned U.S. Property about its lack of independent corporate experience, as follows: "TEP discussed that this firm recently split from AMS. Proposal indicates this firm has managed 6 REAM contracts, probably as part of AMS. Does this firm have single family property management experience in its own right?" HUD did not direct a similar question to ESA.

In its February 25 revised proposal, U.S. Property advised HUD that it had acquired independent corporate experience, having been awarded a September 27, 1996, contract for single-family property inspection services and an October 11, 1996, contract for REAM monitoring services; the protester also furnished favorable reference letters from the clients under these contracts. The TEP increased the protester's prior management experience score from [deleted] to [deleted] points and past performance score from [deleted] to [deleted] points based upon this information. The modest increase in the protester's scores reflected the TEP's assessment that U.S. Property's recent contracts did not establish "significant REAM [experience] as an entity."

The TEP did not consider whether ESA demonstrated successful past performance as an entity, Tr. at 39, but significantly increased the awardee's past performance score from [deleted] to [deleted] points. In its revised proposal, ESA described three emergency situations handled, respectively, by ESA's president and the

[deleted] proposed Intown [deleted]. The TEP chairperson, who is a government technical representative for the incumbent contract, testified that she was personally familiar with the Intown employees' successful management of the emergencies described. Tr. at 30, 60. Her testimony and the contemporaneous evaluation documentation reflect that the past performance of these employees significantly contributed to the increase in the awardee's past performance score.

On May 21, the TEP recommended that the competitive range be narrowed to include five proposals, including ESA's and U.S. Property's. One firm withdrew from the competition, and the agency received two rounds of best and final offers (BAFO) from the remaining four firms. Although ESA's and U.S. Property's final consensus scores were within the "excellent" range under all factors, ESA's proposal significantly outscored U.S. Property's proposal under the prior management experience factor ([deleted] points versus [deleted] points) and the past performance factor ([deleted] points versus [deleted] points), and slightly outscored U.S. Property's proposal under the management capability factor ([deleted] points versus [deleted] points). Both proposals earned a [deleted] score ([deleted] points) under the office location(s) factor.²

The following evaluation results were reported to the source selection official (SSO) to assist in her selection decision:

	Technical Score	Price
Offeror A	92	\$2,420,050
ESA	91	\$2,233,575
Offeror B	85	\$3,071,565
U.S. Property	82	\$1,862,550

Based upon these evaluation results, the SSO determined that ESA's proposal was technically equivalent to Offeror A's higher-priced proposal and so technically superior to U.S. Property's proposal as to offset the protester's price advantage.

²Both the protester's and awardee's [deleted] scores under the office location(s) factor are the product of a mistake that went undetected until the hearing conducted by our Office. Specifically, the agency used a 22-point score from one evaluator on a 20-point scale in deriving the protester's and awardee's consensus scores under this factor. Tr. at 42-44.

The SSO documented her rationale for selecting ESA's proposal in an October 23 source selection memorandum. The October 23 memorandum was written by the contracting officer, and the SSO testified that she did not review, and was unaware of, proposal information and evaluation documentation not described in the memorandum. Tr. at 68, 73-75, 77, 88, 93. The SSO testified, and the source selection memorandum reflects, that award to ESA stemmed from two major discriminators: U.S. Property's perceived lack of corporate experience, Tr. at 70-71, and ESA's proposed use of incumbent staff. Tr. at 71-72, 90. Regarding U.S. Property's perceived lack of corporate experience, the source selection memorandum reports that the protester's proposal did "not provide evidence of the firm handling this large of a workload in the past," that "no direct past performance information for company performance as a REAM was received," and that U.S. Property Management "lacked corporate experience as a REAM." The SSO testified that, in making these findings, she was not aware that U.S. Property's and ESA's proposals reflected the same prior corporate experience owing to their principals' experience with AMS, or that, of the two proposals, only U.S. Property's proposal reflected corporate experience gained independently of AMS. Tr. at 77. The SSO testified that she did not consider ESA's corporate experience, but nevertheless considered the firm more experienced and better equipped to perform the contract based upon its proposed staff of Intown employees.³ Tr. at 92-93. Based upon this analysis, the SSO determined that the technical merit of ESA's proposal outweighed the price advantage of U.S. Property's proposal. Tr. at 100, 104.

U.S. Property protests that the agency conducted an unequal evaluation with respect to its own and ESA's corporate experience. The protester claims that the agency ignored the fact that ESA was a new corporation lacking independent corporate experience and allowed ESA to substitute the qualifications of its proposed incumbent personnel for corporate experience. The protester argues that, had the agency evaluated ESA's proposal for evidence of corporate experience, as it did U.S. Property's proposal, it would have considered U.S. Property's proposal technically superior to ESA's, since both offerors legitimately claimed AMS's favorable corporate experience, but only U.S. Property had acquired positive, independent corporate experience following its incorporation.⁴

³The SSO testified that she was in charge of administering the incumbent contract, had met the incumbent employees, and had reason to know that their performance was satisfactory. Tr. at 88-89.

⁴HUD argues that U.S. Property is not an interested party to raise this issue because Offerors A and B are allegedly next in line for award. This contention lacks merit. A protester is an interested party where, as here, it contests its own evaluation or if it protests that it was treated disparately as compared to the awardee. International Data Prods., Corp. et al., B-274654 et al., Dec. 26, 1996, 97-1 CPD ¶ 34 at 5; Maintenance and Repair, B-251223, Mar. 19, 1993, 93-1 CPD ¶ 247 at 5.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 7. The record must reasonably support the evaluation of the proposals, Intown Properties, Inc., B-262236.2, B-262237.2, Jan. 18, 1996, 96-1 CPD ¶ 89 at 5, and it is fundamental that the contracting agency must treat all offerors equally; it must evaluate offers evenhandedly against common requirements and evaluation criteria. Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996, 96-2 CPD ¶ 241 at 3.

Our review of the record confirms that HUD did not evaluate proposals equally under the prior management experience and past performance factors. The source selection memorandum and underlying evaluation documentation reflect that HUD consistently downgraded U.S. Property's proposal under the prior management experience and past performance factors because the firm was a new corporation with little corporate experience independent of its principal's prior experience with AMS. The record, including the hearing testimony in this case, offers no convincing explanation as to why this same judgment did not apply to ESA's proposal with even greater force, inasmuch as ESA's proposal reflected no corporate experience beyond its principal's prior experience with AMS.

The agency argues that it was not required to evaluate ESA's corporate experience and past performance because it was fully satisfied with the experience of ESA's proposed key personnel. While, based on the language of the RFP, the agency had discretion to emphasize the prior experience of the offerors' employees in evaluating the prior management experience and past performance factors, when the agency chose to emphasize U.S. Property's lack of corporate experience, it could not then ignore ESA's similar lack of corporate experience. HUD stressed the absence of corporate credentials on the part of U.S. Property; for other offerors as well, the agency evaluated those firms' experience under the prior management experience and past performance factors (rather than evaluating the experience of proposed employees). Indeed, our Office previously upheld HUD's decision to reject two proposals from the competitive range in this procurement because, among other reasons, the agency found that the offerors did not possess comparable or satisfactory experience under the prior management experience and past performance factors (employees' experience was evaluated under another factor). See Shel-Ken Properties, Inc., B-277250, Sept. 18, 1997, 97-2 CPD ¶ 79 at 4 (volume of properties managed by firm under prior management experience factor; firm had only one past performance respondent under past performance factor); Pearl Properties, Inc., B-277250.2, Sept. 18, 1997, 97-2 CPD ¶ 80 at 4 (type of inventory managed by firm under prior management experience factor; firm had a negative past performance report under past performance factor).

While the agency required a showing of corporate experience on the part of U.S. Property and the other offerors in this procurement, HUD appears to have carved

an exception for ESA because of the agency's satisfaction with the firm's proposed incumbent personnel. ESA's high scores under the prior management experience and past performance factors thus stemmed from the agency's evaluation of its proposed incumbent staff, not from its corporate experience, which was the standard by which all other proposals were judged under these factors. Tr. at 26, 47-48, 60. By treating ESA as a proxy for the incumbent contractor and accepting incumbent personnel experience in lieu of ESA's corporate experience, HUD conducted an unequal evaluation that prejudiced U.S. Property and the other competitors in this case.

As noted, the agency evaluated ESA's personnel and personnel experience under all four evaluation factors. While this may have exaggerated the importance of personnel experience in the overall evaluation scheme, see J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244 at 6, it might have been permissible, if the record showed that the agency evaluated proposals equally in this respect. This appears not to have been the case. U.S. Property's proposal received credit for its proposed personnel under the management capability factor, where it was noted that the protester's "[s]taff appears good," contributing to a management capability score that nearly matched ESA's. However, the record does not evidence that the TEP considered the "good" qualifications of U.S. Property's proposed personnel under the prior management experience and past performance factors, even though ESA received the benefit of its proposed (incumbent) personnel under these factors; instead the record evidences that the TEP focused on the fact that U.S. Property was a new corporate entity, even though ESA was also a new entity, which was not noted as a concern. While the evaluation scheme may have allowed the agency to consider personnel experience (including credit for incumbent experience) under the prior management experience and past performance factors, both offerors, rather than only ESA, should have received credit for staffing strengths in their proposals under those factors.

Accordingly, we sustain the protest.⁵ We recommend that the agency reevaluate BAFOs. If ESA is not the successful offeror after the reevaluation, its contract should be terminated. We also recommend that U.S. Property be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid

⁵We do not address U.S. Property's contention that ESA did not satisfy the general standards of responsibility contained in Federal Acquisition Regulation §§ 9.104-1(a), (d). An agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may not have been met. 4 C.F.R. § 21.5(c) (1997). Neither exception applies here.

Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1997). U.S. Property should submit its certified claim for costs, detailing the time spent and costs incurred, to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States